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Strengthening of the United Nations system

United Nations reform: measures and proposals

Enhancement of the administration and financial functioning of the United Nations

Report of the Secretary-General

Summary

In its resolution 68/306, the General Assembly requested the Secretary-General to review and report on any impediments or obstacles with regard to the accounts opened by permanent missions of Member and observer States or their staff in New York, and the impact that any such impediments or obstacles had on the adequate functioning of their offices, and also to report on the financial relations of the Secretariat with the banking institutions in New York. The present report contains an analysis of the impact experienced by missions and their staff members on the basis of information collected from them. The report also presents information provided by the host country, in response to the invitation made in the resolution, on the norms and regulations applicable to the banking system regarding the confidentiality of personal data and information.

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I. Background

1. In its resolution 68/306, the General Assembly requested the Secretary-General to review and report on any impediments or obstacles with regard to the accounts opened by permanent missions of Member and observer States or their staff in New York, and the impact that any such impediments or obstacles had on the adequate functioning of their offices, and also to report on the financial relations of the Secretariat with the banking institutions in New York. The Assembly invited the host country to submit information on the norms and regulations applicable to the banking system regarding the confidentiality of personal data and information.

II. Data collection

2. To obtain relevant information, the Secretariat conducted a survey with two components, one addressed to permanent missions and the other to their staff. The missions were requested to provide a consolidated response to the second component and to complete the questionnaire online. A hard copy of the questionnaire was also provided.

3. To ensure information security, the questionnaire was set up in an internal information and communications technology system hosted in a United Nations enterprise data centre compliant with international standards for information security, where it was monitored and protected by firewalls and intruder detection systems.

4. As at the time of the closure of the questionnaire, of the 193 Member States and two observer States, 34 permanent missions had submitted valid responses (17.4 per cent). Responses received subsequently have not been reflected herein.

5. The data gathered have been used only in the preparation of the present report. The analysis presented herein does not identify any specific permanent mission or its staff in order to protect private and personal data and information.

III. Impacts on accounts opened by permanent missions in New York

6. Of the 34 permanent missions that responded, 19 (55.9 per cent) experienced the unilateral closure of bank accounts by financial institutions in New York from 2010 to 2014, with most closures (9) occurring in 2011. On average, two accounts were closed per mission in that period. Of those 19 missions, 7 (36.8 per cent) had one account closed by a financial institution, while 6 (31.6 per cent) had two closed. Twelve (63.2 per cent) indicated that the reason for the closure was linked to local regulatory requirements.

7. In total, 16 permanent missions (84.2 per cent) found that the resulting difficulties had had an impact on their normal operations, while 3 (15.8 per cent) did not find that to be the case. For most (15 missions, or 78.9 per cent), the effects in monetary terms were unknown, but some were able to quantify the effects (ranging from $75,000 to $50 million).

8. The effects included difficulties in making payments to staff members and vendors (73.7 per cent), making payments of assessed and voluntary contributions to the United Nations (57.9 per cent) and transferring funds (52.6 per cent).

9. After the closures, 17 missions (89.5 per cent) took action to open new bank accounts in New York, while 2 (10.5 per cent) used other accounts opened previously.

10. The permanent missions that took action to open new accounts can be categorized into three groups: those that managed to open new accounts in New York, those that managed to open new accounts outside New York and those that did not manage to open new accounts.

Permanent missions that managed to open new bank accounts in New York

11. Of those missions that took action, 15 (88.2 per cent) managed to open new accounts in New York, most within a month (13, or 86.7 per cent). For a few missions, it took between one and three months. The missions in this category approached an average of five financial institutions in New York, with 60 per cent experiencing at least one refusal. More than half of those that experienced a refusal understood it to be due to local regulatory requirements, while others did not know why. As an interim measure during the time between the closure of the accounts and the opening of new accounts, eight missions (53.3 per cent) used alternate accounts. The remaining seven (46.7 per cent) made no interim arrangements.

Permanent missions that managed to open new bank accounts outside New York

12. Of those missions that took action, one (5.9 per cent) managed to open a new account outside New York, doing so in less than three months. It approached four financial institutions in New York, but was refused for unknown reasons. It then approached a financial institution outside New York and was able to open an account. It used cash for necessary transactions as an interim arrangement.

Permanent missions that did not manage to open new bank accounts either in New York or elsewhere

13. Of those missions that took action, one (5.9 per cent) was unable to open a new account, either in New York or elsewhere. It has not found a solution to date, meaning that it uses cash-based transactions for its normal business.

IV. Impacts on accounts opened by staff members of the permanent missions in New York

14. Of the 34 permanent missions that responded, 22 (64.7 per cent) had staff members whose bank accounts were closed by financial institutions in New York. In total, 100 staff members were affected (30 per cent). The closures experienced mostly occurred during the period 2013-2014, with some in 2011 and 2012. Some 45.5 per cent of those missions understood that the closures were due to local regulatory requirements, while for others the reasons were unknown.

15. All missions noted that the closures had led to the affected staff members facing difficulties in leading their daily lives. Some 90.9 per cent could not ascribe a monetary value to the impact, while some estimated it to range from $55,000 to

$2 million. The closures affected the ability of staff members to make the financial transactions needed for daily life such as paying bills (86.4 per cent), repaying loans (36.4 per cent), receiving salaries and allowances (81.8 per cent) and transferring funds (54.5 per cent).

16. Of the 22 missions whose staff members were affected, 16 (72.7 per cent) provided assistance in opening new accounts, including by identifying financial institutions in New York (68.8 per cent), organizing information sessions (56.3 per cent) and providing referral letters to financial institutions (18.8 per cent). One mission said that its support cost $5,000, but others were unable to estimate their assistance in monetary terms.

17. After the closures, 97 affected staff members (97 per cent) from 21 missions took action to open new accounts in New York, while 3 per cent did not. The reasons for inaction cannot be determined from the responses.

18. The staff members who took action to open new accounts can be categorized into three groups: those who managed to open new accounts in New York, those who managed to open new accounts outside New York and those who did not manage to open new accounts.

19. More than 60 per cent of the missions reported that the affected staff members in the first two categories had made no interim arrangements, while 27.3 per cent said that the affected staff members had used alternate bank accounts held either in or outside New York.

Staff members who managed to open new bank accounts in New York

20. Of those affected staff members who took action, 92 (94.8 per cent) from 19 missions managed to open new accounts in New York. Most of the missions reported that the affected staff members had opened new accounts within a month: 11 (57.9 per cent) stated that it had taken less than two weeks, while staff in 7 missions (36.8 per cent) were able to open new accounts within a month. The number of financial institutions in New York that the affected staff members in this category approached ranged from one to six. Nearly 60 per cent of the missions stated that affected staff members had approached a financial institution. There were eight missions (42.1 per cent) whose affected staff members experienced refusals by financial institutions in New York. A total of 15 affected staff members (16.3 per cent) were refused by an average of 2.3 financial institutions. The missions concerned stated that the refusal was either due to local regulatory requirements or unknown reasons.

Staff members who managed to open new bank accounts outside New York

21. Of those affected staff members who took action, four (4.1 per cent) from two missions managed to open new accounts outside New York. On average, it took less than two weeks for them to do so. One mission noted that the affected staff members had opened new accounts outside New York owing to the refusal by a financial institution in New York on the grounds of local regulatory requirements. The other mission did not specify the reasons. The average number of financial institutions that refused their application was one.

Staff members who did not manage to open new bank accounts either in New York or elsewhere

22. Of those affected staff members who took action, one (1 per cent) did not manage to open a new account, either in New York or elsewhere. Whether the staff member has found a solution is not clear from the response received.

V. Financial relations of the Secretariat with the banking institutions in New York

23. The Secretariat currently maintains financial relations with some 40 banking institutions in New York, pertaining to deposits, payments, investments and foreign currency exchange. Six provide consumer banking services.

VI. Norms and regulations applicable to the banking system regarding the confidentiality of personal data and information

24. The information set out in the paragraphs below was provided by the host country in accordance with paragraph 5 of resolution 68/306.

General legal framework: federal and state law, statutory and common law

25. With regard to commercial relationships such as that between a bank and its customer, there is no single source of United States law. Federal statutes, state statutes and common law standards (which themselves can vary by state) all play a role in determining what a bank can and cannot do with a customer's personal financial information and what the customer's recourse is if the bank exceeds its authority. Some legal systems have a single comprehensive legislative framework for data protection in all contexts — governmental and commercial, and treating all aspects of commercial data protection alike — supported by a unified administrative enforcement mechanism in the form of a data protection authority. United States privacy law has developed differently for different contexts, meaning that the privacy of personal information held by financial institutions is regulated differently to that of the same information held by non-financial commercial enterprises, by the federal Government or by state and local governments. United States financial privacy law comes closer to having a comprehensive, federal legislative framework than other sectors of United States privacy law, but state statutes and common law still play a significant role.

Federal law

26. A bank customer's privacy rights concerning personal information collected and held by the bank are protected principally by the federal Gramm-Leach-Bliley Act. The statute, enacted in 1999, eliminated statutory and regulatory barriers limiting the consolidation of banking, securities and insurance. Under the privacy provisions of the Act, and their implementing regulation ("Regulation P"), covered financial institutions, including commercial banks and credit unions, have an affirmative and continuing obligation to respect the privacy of their customers and to protect the security and confidentiality of those customers' non-public personal

information. "Non-public personal information" is any personally identifiable financial information obtained by a financial institution from or about an individual that is not publicly available elsewhere. It should be noted, however, that the Act's protection applies only to financial information from or about an individual that is personally identifiable. Thus, for example, the Act does not limit a bank's ability to share aggregated demographic information about its customer base with other institutions, or even information pertaining to individuals so long as that information has been stripped of all personal identifiers such as name, address and identification numbers. It should also be noted that the Act's protection does not extend to financial information from or about commercial enterprises or other institutions, except insofar as it contains information about individuals.

27. Under the Act, a bank's obligation to protect its customers' privacy manifests principally in a requirement to provide customers with clear and conspicuous notice describing its information-sharing policies and procedures upon initiation of the relationship, and annually thereafter, and also to provide its customers with an opportunity to opt out of the information-sharing before sharing any non-public personal information with third parties. A bank does not have to provide an opportunity to opt out with regard to some types of information-sharing, however, including as necessary to effect, administer or enforce a transaction that the consumer requests or authorizes; to protect against fraud, unauthorized transactions, claims or other liability; for required institutional risk control; to law enforcement and specified regulatory agencies or for an investigation on a matter relating to public safety; and to comply with federal, state or local law or other applicable legal requirements.

28. In addition to the Gramm-Leach-Bliley Act, other federal statutes limit banks' use and sharing of some specific types of information. In particular, the federal Fair Credit Reporting Act regulates banks' use of consumer reports obtained from consumer reporting agencies — a type of information that includes such things as consumer credit reports and credit scores. The Act prohibits a bank from obtaining such a consumer report except for specified permissible purposes, including for the evaluation of a credit transaction, account review or insurance underwriting. It also creates a strong disincentive for a bank to share information from a consumer report by considering such a bank to be a consumer reporting agency in its own right, subjecting it to onerous legal obligations enforced by the threat of private lawsuits. It should be noted, however, that a statutory exception allows a bank to share consumer report information with its affiliates, so long as it provides consumers with notice of the practice and an opportunity to opt out.

State privacy statutes

29. State laws that provide more robust protection for financial information than the Gramm-Leach-Bliley Act are deemed not inconsistent with federal law and are accordingly not pre-empted. One such law is the California Financial Information Privacy Act. Under that legislation, financial institutions are prohibited from sharing non-public personal information with non-affiliated third parties for marketing purposes unless they receive the affirmative consent of the consumer, but may share non-public personal information with affiliates for marketing purposes so long as the consumer has been provided with notice and an opportunity to opt out. The exemptions enumerated in the Gramm-Leach-Bliley Act have largely been preserved.

30. Some other states have comparable statutory schemes, but most do not. Importantly, New York does not; thus, information that a financial institution obtains in New York is protected primarily by the federal statutes outlined above and the common law.

Common law

31. While the common law is almost by definition impossible to summarize comprehensively, some broadly applicable common law principles affect banks' ability to use or share the personal information of their customers.

32. In general, a bank cannot use or share a customer's personal information in such a way as to harm the customer's reputation or livelihood without running the risk of being held liable for damages in a civil lawsuit by the customer. This tort liability can arise from the bank's wilful or negligent actions, but it is easiest to prosecute such a lawsuit if the customer experiences calculable economic damages attributable to the bank's actions. It is much more uncertain whether or how a customer can sue a bank for a perceived breach of privacy owing to unwanted commercial solicitations or the mere fact that personal information was shared, without adverse consequences specifically attributable to the sharing.

33. In addition to tort liability, if a bank has by contract taken on specific obligations with regard to the treatment of a customer's personal information, the bank's breach of those contractual obligations can render the bank liable for damages within the framework established by the contract itself. Among the contracts between banks and their customers that can give rise to such obligations are deposit account agreements, custodial agreements, loan agreements and real estate mortgage loans and deeds of trust. The common law does not assume any such obligations, however. Any contract must explicitly state the obligation for the bank to be held to it.

VII. Conclusion

34. On the basis of the responses received, 19 missions have experienced unilateral closures of their bank accounts, as have 100 staff members from 22 missions. Among those affected who took action to open new accounts, 88.2 per cent of the missions and 94.8 per cent of the staff members were able to do so, mostly within a month. Although the impacts of the closures are difficult to ascertain in monetary terms, most of those affected cited difficulties affecting normal day-to-day business and personal life.

35. The Secretariat appreciates the assistance of the host country authorities in ensuring that all permanent missions of Member and observer States to the United Nations and their staff members are accorded full facilities to perform their functions by ensuring that they are provided with banking facilities on an equal, fair and non-discriminatory basis.

VIII. Action to be taken by the General Assembly

36. **The General Assembly is requested to take note of the present report.**